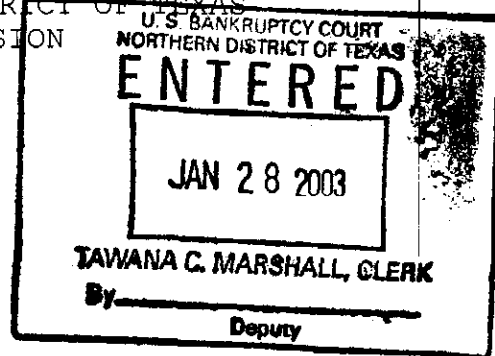


ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



IN RE:

DEBORAH J. COOPER,

D E B T O R.

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CASE NO. 02-36625-SAF-13

MEMORANDUM OPINION AND ORDER

On August 5, 2002, Deborah J. Cooper, the debtor, filed a petition for relief under Chapter 13 of the Bankruptcy Code. On October 17, 2002, the Standing Chapter 13 Trustee filed a motion to transfer venue of the case to the Eastern District of Texas, Plano Division. The court conducted a hearing on the motion to transfer on December 12, 2002.

The determination of venue over the debtor's case constitutes a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(A) and 1334. This memorandum opinion contains the court's findings of fact and conclusions of law. Bankruptcy Rules 7052 and 9014.

In his motion to transfer venue, the trustee alleges that the debtor's domicile and residence are not located within the

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Northern District of Texas. The trustee further argues that the debtor does not have her principal place of business or principal assets in the Northern District of Texas, and thus, this court, pursuant to Bankruptcy Rule 1014(a)(2), must either dismiss or transfer this case to a proper venue.

Cooper testified that she is a single mother living in Plano, Texas, but that she works at Neiman Marcus in downtown Dallas. Plano is in the Eastern District of Texas. Cooper testified that it is more convenient for her to attend court in Dallas in the Northern District of Texas, which is virtually across the street from her place of employment, rather than attend court in Plano in the Eastern District of Texas, which would cause her to take time off work and lose income.

The court must first determine whether the Northern District of Texas is a proper venue for the commencement of Cooper's case. The United States Code provides for venue of cases under the Bankruptcy Code:

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district-

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other

district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

28 U.S.C. § 1408. Cooper is domiciled and resides in the Eastern District of Texas. Although she works in the Northern District of Texas, a salaried individual debtor's place of employment does not equate to the place of business specified in 28 U.S.C.

§ 1408. In re McDonald, 219 B.R. 804, 805 (Bankr. W.D.Tenn. 1998). Cooper did not testify that she had principal assets in the Northern District of Texas. Consequently, the case should have been filed in the Eastern District of Texas.

The court must next determine whether to transfer or dismiss the case. Bankruptcy Rule 1014(a)(2) provides:

If a petition is filed in an improper district, on timely motion of a party in interest and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be dismissed or transferred to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

This case is more conveniently prosecuted for the parties in Dallas rather than in Plano. Cooper works literally across the street from the federal courthouse in Dallas. Her creditors are located throughout the United States, making them indifferent to a Dallas or Plano venue. But her attorney is in Dallas. If the court had discretion under the United States Code to retain the case, it would. The operation of the venue statutes in Dallas

and Plano, Texas, is archaic, bearing no relationship to how lives are lived in the Dallas metropolitan area. Yet, neither Congress nor the Judicial Conference of the United States has addressed the situation and the court must apply the statutes as written. King Ranch, Inc. v. United States, 946 F.2d 35, 37 (5th Cir. 1991).

Rule 1014(a)(2) gives the court discretion to dismiss or transfer the case. The rule does not vest the court with discretion to retain the case. The United States Code provides: "A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412.

Section 1412 vests a court of proper venue with discretion to transfer a case to a more convenient district. But that section applies only to a court of proper venue. Thus, ironically, Cooper could have filed her case in Plano and moved the bankruptcy court for the Eastern District of Texas to transfer the case to Dallas.

A minority of courts, confronted with similar situations, have held that the court could retain the case, rather than forcing the debtor to go through that process. See, e.g., In re Lazaro, 128 B.R. 168 (Bankr. W.D. Tex. 1991). But, with all due respect, those courts have, in effect, recrafted the statutes.

The majority of courts that have ruled on this issue have held that "the bankruptcy court does not have discretion to retain jurisdiction over such an improperly venued case where a creditor timely files an objection." McDonald, 219 B.R. at 805. The court agrees with the majority.

According to the plain language of Rule 1014(a)(2), the court must either transfer or dismiss cases filed in an improper venue. Dismissal is not in the best interest of the debtor, her creditors or the bankruptcy estate. Accordingly, the court will transfer venue of this bankruptcy case to the Bankruptcy Court for the Eastern District of Texas, Plano Division, without prejudice to a motion in the Eastern District of Texas under 28 U.S.C. § 1412.

Based on the foregoing,

IT IS ORDERED that the motion to transfer venue is **GRANTED** and this case is transferred to the Bankruptcy Court for the Eastern District of Texas, Plano Division.

Signed this 23rd day of January, 2002.


Steven A. Felsenthal
United States Bankruptcy Judge